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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

HELEN C. KRAMER,

Defendant and Appellant.

2d Crim. No. B231152
(Super. Ct. No. 1330507)
(Santa Barbara County)

Helen C. Kramer was convicted by jury of felony grand theft (Pen. Code, § 487, subd. (a))¹ and possessing drug paraphernalia (Health & Saf. Code, § 11364). The trial court reduced the grand theft conviction to a misdemeanor due to a change in the law,² suspended imposition of sentence, and granted three years probation with 150 days county jail and "no custody alternatives." Appellant appeals on the ground that the trial court exceeded its authority in ordering jail with "no custody alternatives." We affirm.

¹ All further statutory references are to the Penal Code.

² Before the sentencing hearing, Penal Code section 487, subdivision (a) was amended to increase the threshold amount for grand theft from \$400 to \$950. (Stats. 2010, c. 693 (A.B. 2372), § 1.)

Facts and Procedural History

In 2009, appellant rented an apartment from 66-year-old Judy Meyer and was given an eviction notice for using drugs, causing late night disturbances, and permitting unauthorized people to stay at the apartment. Appellant claimed the eviction was discriminatory. Meyer arbitrated the matter and paid appellant \$600 to move out. Appellant stole and sold Meyer's armoire and property.

At the sentencing hearing, the trial court was concerned about appellant's history of "scamming" landlords and "grifting." Appellant had prior arrests or convictions for welfare fraud, assault with a deadly weapon, and possession of a controlled substance.

The prosecution argued that the court could impose consecutive 180 day sentences. Appellant argued that probation and a year county jail was "no incentive." The trial court asked if appellant would accept probation with six months in the county jail "forthwith. . . ." "You [defense counsel] confer with [appellant]. And it's really going to be up to her, does she want probation when it's going to include her remand to custody today?"

After the recess, counsel stated that appellant "in no uncertain terms" wanted probation. The trial court asked appellant to review "the conditions of probation I am prepared to impose" and provided a draft of the probation order. Appellant reviewed the "Sentencing Order And Terms And Conditions Of Probation" and signed and acknowledged that "I, the defendant have read, understand and accept the above conditions of my probation and have received a copy."

The prosecutor asked for clarification: "On the 150 days in jail, is it the Court's intention she serve those actual jail time versus sometimes when folks remand into custody they can apply for a program?"

"THE COURT: Without custody alternatives. . . . [¶]

"MR. AMEZAGA [defense counsel]: Your Honor, I believe that's within the purview of the sheriff's department.

"THE COURT: I'm not going to interfere with the sheriff's department. At least from the Court's standpoint, [appellant's] been ordered to serve 150 days in the Santa Barbara County Jail with no custody alternatives."

No Custody Alternatives

Appellant argues that the "no custody alternatives" condition was beyond the trial court's jurisdiction. The argument fails on two grounds. First, appellant waived the alleged error by not objecting. (*People v. Welch* (1993) 5 Cal.4th 228, 234-237.) Having negotiated favorable probation terms, appellant may not trifle with the courts by attempting to better the bargain through the appellate process. (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

Second, there was no sentencing error. The trial court was vested with the broad discretion to impose conditions to foster rehabilitation and to protect public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120; *People v. Lent* (1975) 15 Cal.3d 481, 486.) "Probation is not a right, but a privilege. 'If the defendant considers the conditions of probation more harsh than the sentence the court would otherwise impose, he has the right to refuse probation and undergo the sentence. [Citations.]" [Citation.]" (*People v. Bravo* (1987) 43 Cal.3d 600, 608.)

Appellant concedes the trial court was authorized to order, as a condition of probation, that appellant not be granted certain custody alternatives such as work furlough or electronic home detention (Pen. Code, §§ 1208, subd. (b); § 1203.16, subd. (e); see Criminal Law Procedure & Practice (Cont.Ed,Bar 2011) § 392, p. 1198.)

Appellant, however, argues that the trial court lacked authority to deny her other programs such as a sheriff's work release program (§ 4024.2) or a work release program to alleviate jail overcrowding (§ 4024.3). When asked about the "no custody alternatives" condition, the trial court stated that it "was not going to interfere with the sheriff's department."

The probation order is consistent with the principle that a trial court cannot order the sheriff to accept or reject a particular defendant in a local program. "A [trial] judge has the power to commit a person to a correctional facility, but then the

administrative official in charge of the facility has the discretionary power to offer work release if the person is deemed eligible under the rules of the program." (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 539; see e.g., *People v. Superior Court (Peterson)* (1992) 12 Cal.App.4th 16, 25 [court cannot order work furlough to accept a particular defendant].)

Appellant complains that the "no custody alternatives" condition could result in the wholesale denial of eligibility in all local programs. That is for the sheriff and program officials to decide. (See Witkin & Epstein, Cal. Criminal Law, Punishment (3rd ed. 2000) § 32, pp. 69-70, discussing § 4024.2, subd. (d) and § 4024.3, subd. (e).) Appellant got what she bargained for and agreed to the probation terms and conditions. The oral pronouncement of judgment controls over any theoretical discrepancy in the minute order. (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

George C. Eskin, Judge

Superior Court County of Santa Barbara

Kathleen M. Redmond, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant
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